

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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ACTING DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION
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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
CARTY S. CHANG
Interim Chairperson**

**Before the House Committees on
FINANCE**

**Thursday, February 26, 2015
11:00 a.m.
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 393, HOUSE DRAFT 1
RELATING TO HAWAIIAN FISHPONDS**

House Bill 393, House Draft 1 proposes to require the Department of Health (DOH) to waive the requirement to obtain a water quality certification for any person that has received notice of authorization to proceed from the department of land and natural resources office of conservation and coastal lands under the statewide programmatic general permit for the restoration, repair, maintenance, and operation of Hawaiian fishponds. **The Department of Land and Natural Resources (Department) supports this measure.**

Hawai'i State Senate Resolution 86 (2012) urged the Department, the Office of Planning (OP), and DOH to streamline the permitting process for the restoration of Hawaiian fishponds. To this end, the Department has been working with other State, County, and Federal agencies have been working to integrate the many permits needed for the repair, restoration, maintenance, and operation of traditional Hawaiian fishponds.

Agencies have taken the following actions in support of the resolution:

- April 2013 – OP issues a Coastal Zone Management Consistency Statement.
- October 2013 – The Department publishes a Final Programmatic Environmental Assessment for activities related to the repair, restoration, maintenance, and operation of traditional Hawaiian fishponds.
- June 2014 – The Board of Land and Natural Resources approves a programmatic Conservation District Use Permit (CDUP) ST-3703 for the repair, restoration, maintenance, and operation of traditional Hawaiian fishponds (Ho'āla Loko I'a program)

- November 2014 – The United States Army Corps of Engineers notifies the Department that fishpond repair and restoration is consistent with the existing Nationwide General Permit Number 4.

Securing a Water Quality Certification for fishpond repair and restoration is the necessary final step towards creating a streamlined permitting regime.

The Department's Ho'āla Loko I'a program contains best management practices and water quality monitoring protocols that are in compliance with the federal Clean Water Act and with Environmental Protection Agency guidelines, as well as with Section 10 of the Rivers and Harbors Act of 1899.

The Final Environmental Assessment reviewed the best available science, and concluded that repair, restoration, maintenance, and operation of traditional Hawaiian fishponds would have significant benefits to Hawaiian biocultural resources and long-term cumulative benefits to the State's coastal ecosystems and water quality.

The Ho'āla Loko I'a program has been funded and/or supported by a network of governmental and non-governmental entities, such as Conservation International (CI), Kua'āina Ulu 'Auamo (KUA), the National Oceanic Atmospheric Administration, traditional fishpond practitioners, and others, with no additional budgetary requirements for the Department. Once the program is fully operational, application processing will be managed by the Department's Office of Conservation and Coastal Land and technical support for traditional fishpond practitioners (e.g., preparation of a guidebook, and water quality monitoring) will be supported by entities such as CI, KUA and others.



HB393 HD1
RELATING TO HAWAIIAN FISHPONDS
House Committee on Finance

February 26, 2015

11:00 a.m.

Room 308

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB393 HD1, which seeks to promote the restoration, repair, maintenance, and operation of traditional Hawaiian fishponds by waiving Department of Health water certification permitting requirements for those projects that have been vetted through the statewide general programmatic fishpond permit process.

OHA commends the intent of this measure, in seeking to support the restoration and rejuvenation of our traditional Hawaiian fishponds. Traditional fishponds, or loko i'a, were and continue to be important cultural resources to Native Hawaiians. Demonstrating advanced engineering and aquaculture technologies found nowhere else in the Pacific, loko i'a still serve as a source of sustenance, and today offer a wide range of educational opportunities for Native Hawaiians and the larger community. In addition, fishpond restoration has become a major part of the Hawaiian cultural revival movement, with a number of groups across Hawai'i taking on the kuleana of bringing once-forgotten fishponds back to life.

Unfortunately, the permitting and approval processes for fishpond restoration have proven cumbersome, hindering efforts to revive these cultural treasures. Accordingly, OHA has consistently supported state and federal agencies' efforts, as well as those of fishpond practitioners and cultural nonprofit organizations, in streamlining these processes, when appropriate, into an interagency programmatic permit. OHA understands that this bill now seeks to remove a separate and time-consuming permitting process required under the Department of Health's water quality rules. OHA notes that notwithstanding this waiver, substantive water quality standards and protections will be maintained via the best management practices and other conditions required under the general programmatic fishpond permit process.

Accordingly, OHA urges the Committee to **PASS** HB393 HD1.

Mahalo nui for the opportunity to testify on this measure.

FIN-Jo

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 24, 2015 8:45 PM
To: FINTestimony
Cc: darakawa@lurf.org
Subject: Submitted testimony for HB393 on Feb 26, 2015 11:00AM

HB393

Submitted on: 2/24/2015

Testimony for FIN on Feb 26, 2015 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
David Z. Arakawa	Land Use Research Foundation of Hawaii	Support	No

Comments: The Land Use Research Foundation of Hawaii SUPPORTS HB 393,HD1, Relating to Hawaiian Fishponds, which proposes to waive DOH water quality certification requirements for restoration, repair, and operation of Hawaiian loko iâ€™a (fishponds) that are permitted under the Statewide Programmatic General Permit process, administered by the DLNR. (HB393 HD1)

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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finance8-Melanie

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 24, 2015 11:49 PM
To: FINTestimony
Cc: amybrinker@mac.com
Subject: *Submitted testimony for HB393 on Feb 26, 2015 11:00AM*

HB393

Submitted on: 2/24/2015

Testimony for FIN on Feb 26, 2015 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Brinker	Individual	Support	No

Comments:

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Testimony of
JOHN N. (JACK) KITTINGER, PhD

FEBRUARY 24, 2015

IN CONSIDERATION OF
HOUSE BILL 393
RELATING TO HAWAIIAN FISHPONDS

I strongly support HB 393 and urge the Hawaii State legislature to pass this important bill.

HOUSE BILL 393 requires the Department of Health to waive the requirement to obtain a water quality certification for any person that has received notice of authorization to proceed from the department of land and natural resources office of conservation and coastal lands under the statewide programmatic general permit for the restoration, repair, maintenance, and operation of Hawaiian fishponds. We at Conservation International – Hawaii support this measure.

A diverse array of partners, including the Department of Land and Natural Resources' Office of Conservation and Coastal Lands, the Department of Health, Honua Consulting, non-profit organizations, and fishpond practitioners, to streamline the otherwise daunting and expensive regulatory and permitting process required for fishpond practitioners to restore and operate traditional Hawaiian fishponds.

The DLNR State Department has already made great strides in integrating all permits needed from State, County and Federal agencies to repair, restore, maintain and operate a traditional Hawaiian fishpond. By securing Water Quality Certification for fishpond repair and restoration, we will have took the final step in creating the streamlined permitting process, thus creating a clear avenue for fishpond practitioners to restore even more fishponds.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Kittinger", with a stylized flourish at the end.

John N. (Jack) Kittinger, PhD



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

LATE

**Testimony COMMENTING on H.B. 393 H.D.1
RELATING TO HAWAIIAN FISHPONDS**

REPRESENTATIVE SYLVIA LUKE, CHAIR
REPRESENTATIVE SCOTT Y. NISHIMOTO, VICE CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: February 26, 2015 Room Number: 308

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health (DOH) supports the intent of this measure
3 to streamline the permitting process for loko i‘a projects, but has concerns that water pollution
4 controls be maintained. This measure would waive the requirement to obtain a Section 401
5 Water Quality Certification (WQC) if a project has received a notice of authorization to proceed
6 by the Department of Land and Natural Resources (DLNR) under a Statewide Programmatic
7 General Permit (SPGP) for the restoration, repair, maintenance, and operation of a traditional
8 Hawaiian fishpond system (loko i‘a).

9 DOH continues to support efforts to streamline the permit process for loko i‘a projects.
10 Currently, DOH is actively working on the implementation of blanket conditional Section 401
11 WQC for the Department of the Army (DA) Nationwide Permits (NWP) for the state. If a
12 blanket WQC is put in place, a majority of loko i‘a projects would be covered and thereby would
13 not be required by DOH to obtain a Section 401 WQC.

14 The proposed measure is a complete waiver of all Section 401 WQC requirements for
15 loko i‘a projects including the requirement to comply with Water Quality Standards (WQS) in
16 HAR 11-54. DOH believes that this proposed measure, with its current language, would waive
17 the state’s rights and duty to assess and opine on the sufficiency of water pollution controls in
18 place for loko i‘a projects. The bill should state that “this waiver of water quality certification

1 does not exempt Hawaiian fishponds from requirements under HRS 342D and rules promulgated
2 thereunder including Water Quality Standards, except on rules on Water Quality Certification.”

3 Thank you for the opportunity to testify on this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2015 4:50 PM
To: FINTestimony
Cc: terez.amato@yahoo.com
Subject: *Submitted testimony for HB393 on Feb 26, 2015 11:00AM*

HB393

Submitted on: 2/25/2015

Testimony for FIN on Feb 26, 2015 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Terez Amato Lindsey	Individual	Support	No

Comments:

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Honua Consulting

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Wednesday, February 17, 2015 11:00 A.M. State Capitol, Conference Room 308

HB 393 HD 1

TESTIMONY TO HOUSE COMMITTEE ON FINANCE (FIN)

HONUA CONSULTING
Trisha Kehaulani Watson, JD, PhD
Owner

LATE

Position

We are strong support of this legislation.

Statement

In 2012, the legislature asked DLNR, the State Office of Planning and the State Office of Health to streamline the permitting process for the restoration of Hawaiian fishponds (attached). Office of Planning quickly completed the required consistency statement (attached). DLNR OCCL undertook a major effort to complete a FEA / FONSI (completed 2013) and Master CDUP working with twelve federal and state authorizing agencies to streamline the permitting process (completed 2014).

Despite the urging and effort of public, private and NGO partners, there has been no action on the part of the State Department of Health on this matter for three years.

This measure builds off of numerous measures that have encouraged the state to find mechanisms to streamline the permitting process for traditional Hawaiian fishponds. This is a request that has advocated for by fishpond practitioners, civic clubs and conservationists who recognize the significant environmental and community benefits that are gained from supporting fishpond restoration activities.

This bill has been carefully and narrowly crafted to provide a **waiver** to a limited scope of project activities that have been thoroughly reviewed for any environmental impact through the environmental assessment process. The FONSI, completed in 2013, found that these activities would have no adverse impact on water quality. This statute complies with the language of the Clean Water Act, 33 U.S.C. 1341, which allows for **waiver** of certification requirements with respect to the applicable federal application. Similar waivers already exist within the current state regulations, HAR Section 11-9.1.04 (attached).

We understand that for some practitioners, this bill does not go far enough, that a complete exemption of all laws for traditional Hawaiian fishponds would be preferred. We do not believe such an option is possible through state legislation, as state legislation cannot preempt federal law.

We believe this bill provides for **the final piece** in streamlining the permitting process, which has been long awaited by the community. HDOH will still have full opportunity to review every application that comes through the program, only through a streamlined process led by DLNR OCCL through their Master CDUP, which was passed by the land board last year. All laws and regulations will still be fully complied with – in no way does this reduce existing environmental policies and standards, including the Clean Water Act and Hawaii State Water Quality Standards, it only makes the permitting process easier for the many communities throughout Hawai'i eager to help protect these vital resources. These are already conditions of the Master CDUP.

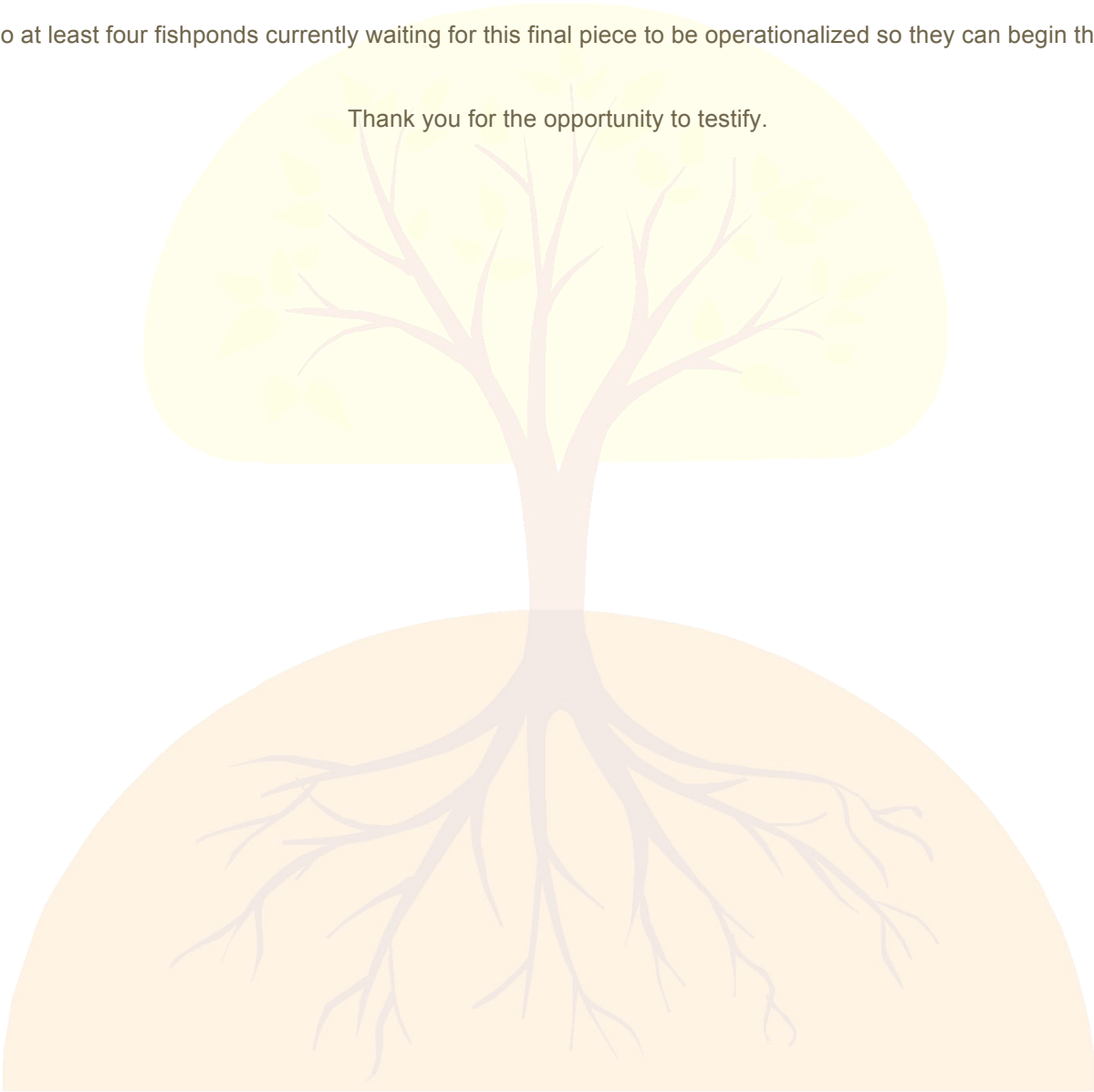
Historically, HDOH has circumvented its own legal requirements by refusing to accept applications for water quality certifications in a timely manner. Often, applicants will have to wait months, if not years, before the HDOH between the first submittal of an application by an applicant and the formal acceptance of the application by the Clean Water Branch office. The reality is that this legislation is absolutely necessary if the legislative priorities set forth in 2012 are to be fulfilled.

Honua Consulting

A range of third party partners has rallied to provide support services to community organizations and practitioners to build capacity among practitioners to fully and effectively comply with all the water quality BMPs and conditions. These entities are developing a guidebook, training materials and an annual report to demonstrate the many community and ecosystem services that Hawai'i gains from this streamlined permitting process.

There are also at least four fishponds currently waiting for this final piece to be operationalized so they can begin their restoration activities.

Thank you for the opportunity to testify.



Honua Consulting
www.honuaconsulting.com

SENATE RESOLUTION

URGING THE DEPARTMENT OF LAND AND NATURAL RESOURCES, DEPARTMENT OF HEALTH, AND OFFICE OF PLANNING TO STREAMLINE THE PERMITTING PROCESS FOR THE RESTORATION OF HAWAIIAN FISHPONDS.

1 WHEREAS, repair of many Hawaiian fishponds may require
2 permits from the Department of Land and Natural Resources,
3 Department of Health, Office of Planning, and federal and county
4 governments; and

5
6 WHEREAS, the process in obtaining a permit for the
7 restoration of Hawaiian fishponds is time consuming,
8 complicated, and confusing and varies depending upon the
9 circumstances of party applying for the permit; and

10
11 WHEREAS, the existing regulations and permit requirements
12 preclude community organizations and Native Hawaiian
13 aquaculturalists from repairing and maintaining Hawaiian
14 fishponds; and

15
16 WHEREAS, the State has the ability to streamline the permit
17 process and promote interagency cooperation to facilitate
18 restoration and leasing of fishponds to cultural and familial
19 descendants; and

20
21 WHEREAS, the State has not led a comprehensive initiative
22 to streamline the permit process for restoration of Hawaiian
23 fishponds in over thirty years; and

24
25 WHEREAS, the restoration and reuse of *loko i'a* provide an
26 opportunity to increase supplies of certain fish which will make
27 Hawaii more food-secure and increase sustainable economic
28 development opportunities for rural communities; now, therefore,

29
30 BE IT RESOLVED by the Senate of the Twenty-sixth
31 Legislature of the State of Hawaii, Regular Session of 2012,
32 that the Department of Land and Natural Resources, Department of
33 Health, and Office of Planning are urged to streamline the



1 permitting process for the restoration of Hawaiian fishponds;
2 and
3

4 BE IT FURTHER RESOLVED that the Department of Land and
5 Natural Resources, Department of Health, and Office of Planning,
6 in collaboration with community organizations and Native
7 Hawaiian aquaculturalists, consider the following to facilitate
8 restoration of Hawaiian fishponds:
9

- 10 (1) One master conservation district use application
11 process that applies to all Hawaiian fishponds;
12
- 13 (2) A coastal zone management program consistency
14 statement for Hawaiian fishponds;
15
- 16 (3) Water quality certification for Hawaiian fishponds;
17
- 18 (4) A national pollution discharge elimination system
19 general permit for Hawaiian fishponds; and
20
- 21 (5) Administrative rules to be applied consistently
22 throughout the State; and
23

24 BE IT FURTHER RESOLVED that the Department of Land and
25 Natural Resources, Department of Health, and Office of Planning
26 are requested to submit their recommendations and draft
27 legislation for a streamlined permit process for the restoration
28 of Hawaiian fishponds to the Legislature no later than twenty
29 days prior to the convening of the Regular Session of 2013; and
30

31 BE IT FURTHER RESOLVED that certified copies of this
32 Resolution be transmitted to the Governor, Chairperson of the
33 Board of Land and Natural Resources, Director of Health, and
34 Director of the Office of Planning.



Hawaii Coastal Zone Management Program
General Concurrence for Minor Federal Permit Activities for
Hawaiian Fishpond Restoration, Repair, Maintenance and Reconstruction

Senate Resolution No. 86 (SR86), which was adopted by the Hawaii State Legislature on April 10, 2012, urges the Department of Land and Natural Resources, Department of Health, and Office of Planning to streamline the permitting process for the restoration of Hawaiian fishponds. The resolution also requests the Office of Planning to consider “a coastal zone management program consistency statement for Hawaiian fishponds.” Hawaiian fishponds are aquaculture structures, which include man-made and natural enclosures of water in which fish and other aquatic organisms are raised and harvested. Hawaiian fishponds have historic, cultural and economic significance for the State of Hawaii.

In response to SR86 and in accordance with federal regulations, the Hawaii Coastal Zone Management (CZM) Program is issuing a general concurrence for minor federal permit activities for Hawaiian fishpond restoration, repair, maintenance and reconstruction. Coastal Zone Management Act federal consistency regulations (15 CFR Part 930) establish procedures for States to issue general concurrences (15 CFR §930.53(b)) allowing similar minor work in the same geographic area to avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource. Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR Part 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.

The U.S. Army Corps of Engineers permit is the relevant federal permit for Hawaiian fishpond restoration activities. The Hawaii federal permit list includes the following U.S. Army Corps of Engineers permit authorities:

Rivers and Harbors Act of 1899, Sections 9, 10 and 11
Marine Protection, Research and Sanctuaries Act of 1972, Section 103
Federal Water Pollution Control Act of 1972 and amendments, Section 404

Federal consistency general concurrence procedures (15 CFR §930.53(b)) require that the applicable federal permit activities and the relevant conditions be included in the Hawaii list of federal permits subject to federal consistency review. Therefore, the Hawaii CZM Program is amending the federal permit list to include the general concurrence provisions for Hawaiian fishponds.

Hawaii List of Federal Licenses and Permits Subject to Federal Consistency Review

U.S. Army Corps of Engineers permits required under:

Rivers and Harbors Act of 1899, Sections 9, 10 and 11
Marine Protection, Research and Sanctuaries Act of 1972, Section 103
Federal Water Pollution Control Act of 1972 and amendments, Section 404

General Concurrence for Federal Permit Activities for Hawaiian Fishpond Restoration, Repair, Maintenance and Reconstruction

I. Federal Permit Activities

CZM federal consistency general concurrence applies to the following Federal permit activities for the restoration, repair, maintenance and reconstruction of existing Hawaiian fishponds, subject to the applicable geographic area and the relevant conditions listed below. Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR Part 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.

- (a) Restoration, reconstruction, repair and maintenance of fishpond walls and sluice gates, including but not limited to the placement, movement, manipulation and temporary stockpiling of necessary materials.
- (b) Placement, movement, manipulation and temporary stockpiling of small stones or rubble for interior wall fill (‘ili‘ili).
- (c) Silt removal by hand and/or mechanized equipment from within fishponds.
- (d) Vegetation removal by hand and/or mechanized equipment from within fishponds and from fishpond walls.
- (e) Periodic post-restoration maintenance activities required to facilitate the long-term use, management and operation of fishponds.
- (f) Use of hand and/or mechanized equipment to conduct fishpond restoration activities.
- (g) Placement of temporary structures within fishponds which are necessary to conduct restoration activities.
- (h) Placement and use of aquaculture pens, nets, and/or cages within fishponds.
- (i) Use of harvesting equipment within fishponds.

II. Geographic Area

The geographic areas covered by this general concurrence include coastal land areas, shoreline areas, and nearshore ocean waters within the State of Hawaii where existing Hawaiian fishponds are located. The specific geographic area is defined by the type of fishpond.

Fishponds are categorized into six main types according to the “Hawaiian Fishpond Study” (DHM Planners, Inc. and Public Archaeology Section, Applied Research Group, Bernice Pauahi Bishop Museum, June 1989; based on information by William K. Kikuchi, 1973, Hawaiian Aquacultural System). Each fishpond type is specific to a particular geographic area. Refer to Figure 1, which provides a conceptual diagram and geographic area of each type of fishpond.

Type I - Loko Kuapa: A fishpond of littoral water whose side or sides facing the sea consist of a stone or coral wall usually containing one or more sluice gates.

Type II - Loko Pu`uone: An isolated shore fishpond usually formed by the development of barrier beaches building a single, elongated sand ridge parallel to the coast and containing one or more ditches and sluice gates.

Type III - Loko Wai: An inland freshwater fishpond which is usually either a natural lake or swamp, which can contain ditches connected to a river, stream, or the sea, and which contain sluice gates.

Type IV - Loko i`a kalo: An inland fishpond utilizing irrigated taro plots.

Type V - Loko `Ume`iki: A fishtrap which is similar to a Type I - loko kuapa and has various combinations of inward and outward leading lanes.

Type VI - Kaheka and Hapunapuna: A natural pool or holding pond.

III. Conditions

1. Copies of U.S. Army Corps of Engineers permit applications for activities covered by this general concurrence must be sent by the applicant to the Hawaii CZM Program for the purpose of monitoring adherence to the required conditions.
2. Fishpond restoration activities shall be conducted in compliance with applicable State of Hawaii water quality standards and requirements of Hawaii Revised Statutes (HRS) Chapter 342D Water Pollution and Hawaii Administrative Rules (HAR) Chapter 11-54 Water Quality Standards, which are federally approved enforceable policies of the Hawaii CZM Program.

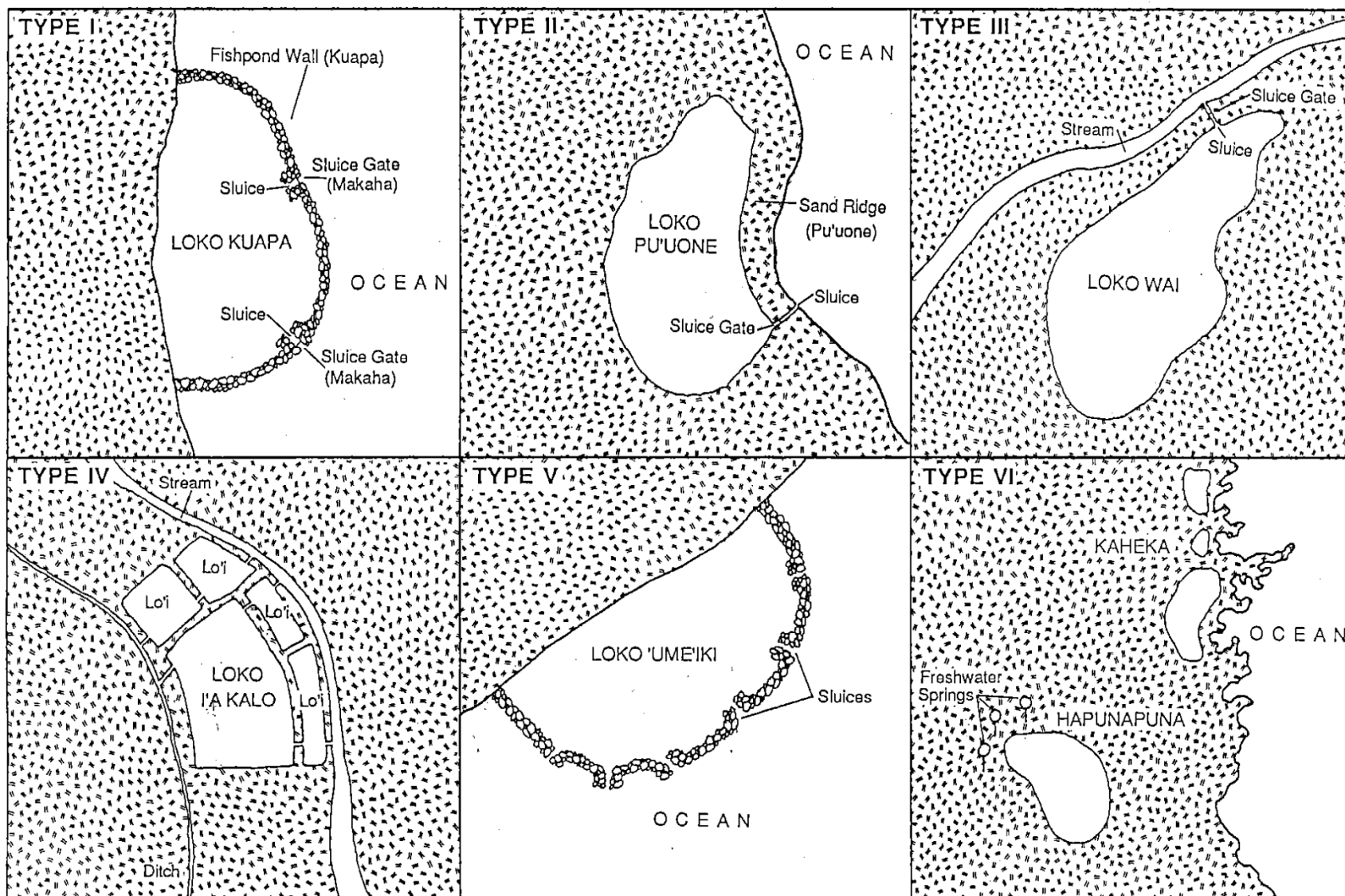
3. Fishpond restoration activities shall be conducted in compliance with applicable State of Hawaii water pollution control requirements of HRS Chapter 342D Water Pollution and HAR Chapter 11-55 Water Pollution Control, which are federally approved enforceable policies of the Hawaii CZM Program.
4. Best management practices, such as silt containment devices and turbidity control measures, shall be implemented during fishpond restoration activities to minimize impacts on surface and ocean water quality. This condition is necessary to ensure consistency with Hawaii CZM Program coastal ecosystems policies established in HRS Chapter 205A Coastal Zone Management (HRS §205A-2(b)(4)(A) and HRS §205A-2(c)(4)), which is a federally approved enforceable policy.
5. Materials used for fishpond restoration, reconstruction and repair may be from on-site and/or off-site, and shall be clean and free of waste products, debris, or any potentially hazardous materials. This condition is necessary to ensure consistency with Hawaii CZM Program coastal ecosystems policies established in HRS Chapter 205A Coastal Zone Management (HRS §205A-2(b)(4)(A) and HRS §205A-2(c)(4)), which is a federally approved enforceable policy.
6. Whenever active fishpond restoration activities are occurring, work areas shall be monitored for endangered, threatened or indigenous species protected by the State of Hawaii under HRS Chapter 195D Conservation of Aquatic Life, Wildlife, and Land Plants, and HAR Chapter 13-124 Indigenous Wildlife, Endangered and Threatened Wildlife, and Introduced Wild Birds, which are federally approved enforceable policies of the Hawaii CZM Program. If any protected endangered, threatened or indigenous species are present in the vicinity of the restoration area, work shall cease until the animal has left the area.
7. Fishpond restoration activities shall be conducted in compliance with applicable State of Hawaii conservation district requirements established in HRS Chapter 183C Conservation District and HAR Chapter 13-5 Conservation District, which are federally approved enforceable policies of the Hawaii CZM Program.
8. The State Historic Preservation Division (SHPD) shall be consulted prior to beginning fishpond restoration and any requirements of SHPD shall be complied with. This condition is necessary to ensure consistency with HRS Chapter 6E - Historic Preservation, which is a federally approved enforceable policy of the Hawaii CZM Program.
9. Fishpond restoration activities shall be conducted in compliance with special management area and shoreline setback area requirements of the respective county in which the fishpond restoration occurs. This condition is necessary to ensure consistency with HRS Chapter 205A Coastal Zone Management (HRS Chapter 205A, Part II and Part III), which is a federally approved enforceable policy of the Hawaii CZM Program.
10. Public access along the shoreline shall not be precluded by any fishpond restoration activities. If restoration work involves an area used for public shoreline access and if safe public access cannot be maintained during restoration, then provisions shall be made to

ensure that public access is provided by alternative routes and/or means. This condition is necessary to ensure consistency with federally approved Hawaii CZM Program enforceable policies for ensuring and managing public access established in HRS Chapter 205A Coastal Zone Management (HRS §205A-2(b)(1)(A) and HRS §205A-2(c)(1)(B)) and HRS Chapter 115 Public Access to Coastal and Inland Recreational Areas.

IV. General Concurrence Procedures

- (a) Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.
- (b) Copies of federal license and permit applications for activities subject to the general concurrence must be sent by the applicant to the Hawaii CZM Program for the purpose of monitoring adherence to the required conditions.

Figure 1
HAWAIIAN FISHPOND TYPES



"Hawaiian Fishpond Study"

DHM Planners, Inc. and Public Archaeology Section, Applied Research Group, Bernice Pauahi Bishop Museum, June 1989

comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp NOV 1 5 2014] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.04 Water quality certification; waiver. (a) If the director fails or refuses to act on a request for certification within one year after receipt of a complete water quality certification application, then the certification requirements of section 11-54-9.1 shall be waived with respect to the federal application.

(b) If the discharge resulting from an activity receives a determination to be covered under a nationwide permit authorization, thereby fulfilling specific conditions of that permit pursuant to 33 CFR sections 330.4, 330.5, and 330.6, then the director will determine, on a case-by-case basis, which projects are considered minor and non-controversial. Certification requirements of section 11-54-9.1 shall be waived for minor and non-controversial activities within one year of receipt of a complete water quality certification application. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp NOV 1 5 2014] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.05 Water quality certification; adoption of new water quality standards.

(a) The licensee or permittee shall comply with any new water quality standards as adopted by the department.

(b) In any case where:

Encourage restoration of fishponds - Hawaii News - Honolulu Star-Advertiser

StarAdvertiser.com

Encourage restoration of fishponds

POSTED: 01:30 a.m. HST, May 04, 2013

Long before sustainability became fashionable, ancient Hawaiians built an extensive aquaculture system across the archipelago that included more than 400 fishponds that contained prized fish for ali'i. The system and its methodology were uniquely Hawaiian, found nowhere else in the world.

Nearly all of Hawaii's old fishponds are long gone. Preserving what's left — about 10 percent — has proven difficult in a modern developed world. So it's encouraging that federal and state officials are working together to make it easier to bring more fishponds back to life, reviving both a valuable aquaculture resource and a rich cultural tradition.

The state Department of Land and Natural Resources proposes to serve as a clearinghouse to help handle processing permits with various state and federal agencies, cutting through some of the red tape that hinders restoration work.

Under the plan, the permit process would take no more than a year. The state Office of Environmental Quality Control has made available a draft environmental assessment related to this plan.

Any change in the rules that encourages more qualified people and organizations to engage in this important work should be implemented.

The restoration of traditional fishponds promises many benefits: an increase in the supply of fish in an ecologically sustainable way, for instance. But there is also the less-tangible benefit of the preservation and revival of a long-dormant cultural heritage that would inform not only modern Hawaiians but non-Hawaiians and tourists alike.

The effort began nearly two decades ago when Molokai officials included fishpond restoration in addressing economic issues for the state's poorest island. Molokai once was considered prosperous, due to more than 60 fishponds encompassing more than 1,500 acres mostly next to the sea. Some fishponds in Hawaii have been carbon-dated to the 1400s, and their annual yield approached 2 million pounds, according to leading authority Graydon "Buddy" Keala, in a treatise through the University of Hawaii's College of Tropical Agriculture and Human Resources.

The fishponds' primary role was "to provide a reliable, convenient and ever-ready supply of fish seafood for the ruling ali'i and the royal court. ... The system was not developed for great amounts of yield but rather for the convenience of the Hawaiian royalty," Keala noted.

Fishponds declined drastically over the past century, not just with the passing of royalty but because of land development, population, lifestyles and economics. Those factors were less on Molokai, thus the logical island for the revival to begin. Since 1999, Congress has allocated \$1.4 million to restore many of those fishponds and analyze water quality effects.

"There's tremendous interest from the Hawaiian community about this," said Sam Lemmo, a DLNR administrator. "It's not just about restoring a physical pond. It has a cultural element, too."

Private groups have taken a commendable role in the effort:

- » The fishpond advocate Hui Malama Loko I'a, representing 25 fishpond groups, is supporting the state proposal.
- » Paepae o He'eia, the Friends of the He'eia Fishpond, has been waiting for years for an Army Corps of Engineers permit to repair an 89-foot section of a fishpond wall.
- » The nonprofit Ka Honua Momona ("the fertile land") has been restoring the Alii and Kalokoeli fishponds on South Molokai in recent years, with a mission for them to "become a self-sufficient model for all nations."

These groups and others see promise in this proposal, and for good reason. Restoring long-neglected fishpond systems could be a significant act of environmental and cultural preservation in the face of relentless development.

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Red tape ties up groups' fishpond restorations

Native Hawaiians say the ponds are an important economic and cultural resource

By Gary T. Kubota

POSTED: 01:30 a.m. HST, Mar 11, 2012

Hi'ilei Kawelo said government rules haven't been a help in her more than 10 years of trying to restore an 88-acre traditional Hawaiian fishpond at Heeia-Kea.

"It's such a deterrent. It's probably easier to blow up a mountain and put a road through it than it is to re-build a fishpond," said Kawelo, executive director of the nonprofit Paepae o He'eia.

She said her group is treated as if it were proposing a new commercial development and required to receive several permit approvals — the latest an Army Corps of Engineers review that will take at least two years to repair an 89-foot section of a wall damaged in a 1965 storm.

PERMITS NEEDED

Here are some of the permits and studies that were needed during more than 10 years to be able to restore the three-acre Ko'ie'ie Fishpond on Maui:

- >> Army Corps of Engineers permit.
- >> State Department of Health water quality permit.
- >> State Department of Land and Natural Resources' Conservation District Use Application permit.
- >> State DLNR shoreline certification approval.
- >> Maui County Special Management Area permit or SMA minor permit.
- >> State survey of the pond for a lease.
- >> Marine archaeological study.

But Kawelo needs help now.

"We need to grow food now. ... Government needs to figure out how to make it a one-stop shop," she said.

This low-tech alternative was once successful enough to be a major source of food for Native Hawaiians in the early 1800s, with an estimated 400 fishponds statewide, including 96 on Oahu. There are now about 10 fishponds remaining on Oahu, Kawelo said.

The fishponds can become a resource for economic export, as shown by a six-acre commercial project in part of the Heeia fishpond that once produced 70,000 pounds of moi annually and 1,000 pounds of ogo weekly for a number of years before 1999. The operation sold the moi and ogo to various local markets in Hawaii, California and Canada before it closed.

At Kalepolepo Beach Park in south Maui, a group of Native Hawaiians has taken nearly 10 years to receive all the federal, state and county permits to restore a three-acre fishpond — a project supported by the nearby Hawaiian Islands Humpback Whale National Marine Sanctuary.

Despite no opposition, the work to prepare the permits to restore Ko'ie'ie Fishpond took about 1,600 to 2,000 hours and about \$60,000, project leader Kimokeo Kapahulehua said.

"For us, it wasn't a cheap deal," said Kapahulehua, president of Ao'ao O Na Loko I'a O Maui, a group trying to restore Maui's fishponds.

Kapahulehua said the group has restored about half the fishpond and is still raising funds to complete the repair and restoration of the rest of it.

He said he sees the fishponds as a method to revive the ocean environment and Hawaiian culture.

"The fishpond can be an embryo for revitalizing marine life. It can be a birthplace for all these things we're losing," Kapahulehua said.

The partial restoration of Ko'ie'ie Fishpond already had a beneficial impact, allowing sand to collect along the shoreline fronting the park, federal officials said.

State Land Board Chairman William Aila said many rural communities on the neighbor islands and Oahu are asking for a larger role in maintaining resources, including fishponds.

"They're coming and saying, 'We have a problem, and we'd like to be part of the solution,'" he said. "The challenge is to find a balance."

A group of government officials, conservationists and Hawaiian cultural practitioners, including Aila and Kawelo, recently visited the Republic of Palau in the western Pacific, where tribal villages still maintain fishponds and are developing ecotourism.

Kawelo said compared to Hawaii, Palau's population is small, about 21,000, and the vast majority of them are native Palauans who follow fishpond rules set by village chiefs.

She said people in Hawaii come from various cultural backgrounds and many are not reliant on nearshore resources to feed themselves.

She said government officials need to reorder priorities to enable the restoration of environmentally friendly fishponds.

"I think it's obvious rules and regulations need to change," she said. "I think our government needs to put the environment first."



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LATE

**Testimony COMMENTING on H.B. 393 H.D.1
RELATING TO HAWAIIAN FISHPONDS**

REPRESENTATIVE SYLVIA LUKE, CHAIR
REPRESENTATIVE SCOTT Y. NISHIMOTO, VICE CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: February 26, 2015

Room Number: 308

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health (DOH) supports the intent of this measure
3 to streamline the permitting process for loko i‘a projects, but has concerns that water pollution
4 controls be maintained. This measure would waive the requirement to obtain a Section 401
5 Water Quality Certification (WQC) if a project has received a notice of authorization to proceed
6 by the Department of Land and Natural Resources (DLNR) under a Statewide Programmatic
7 General Permit (SPGP) for the restoration, repair, maintenance, and operation of a traditional
8 Hawaiian fishpond system (loko i‘a).

9 DOH continues to support efforts to streamline the permit process for loko i‘a projects.
10 Currently, DOH is actively working on the implementation of blanket conditional Section 401
11 WQC for the Department of the Army (DA) Nationwide Permits (NWP) for the state. If a
12 blanket WQC is put in place, a majority of loko i‘a projects would be covered and thereby would
13 not be required by DOH to obtain a Section 401 WQC.

14 The proposed measure is a complete waiver of all Section 401 WQC requirements for
15 loko i‘a projects including the requirement to comply with Water Quality Standards (WQS) in
16 HAR 11-54. DOH believes that this proposed measure, with its current language, would waive
17 the state’s rights and duty to assess and opine on the sufficiency of water pollution controls in
18 place for loko i‘a projects. The bill should state that “this waiver of water quality certification

1 does not exempt Hawaiian fishponds from requirements under HRS 342D and rules promulgated
2 thereunder including Water Quality Standards, except on rules on Water Quality Certification.”

3 Thank you for the opportunity to testify on this measure.

LATE

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2015 9:59 PM
To: FINTestimony
Cc: leimomikekina@gmail.com
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HB393

Submitted on: 2/25/2015

Testimony for FIN on Feb 26, 2015 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Dierks	Individual	Support	No

Comments:

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HB393

Submitted on: 2/25/2015

Testimony for FIN on Feb 26, 2015 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Kalaniua Ritte	Hui o Kuapa	Support	No

Comments:

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